Filed 10/6/04 P. v. Lopez CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. VINCENT FRANCISCO LOPEZ et al., Defendants and Appellants.	B170919 (Los Angeles County Super. Ct. No. KA060104)

APPEAL from the judgments of the Superior Court of Los Angeles County. Charles Horan, Judge. Affirmed.

Colleen M. Rohan, under appointment by the Court of Appeal, for Defendant and Appellant Vincent Francisco Lopez.

Corinne S. Shulman, under appointment by the Court of Appeal, for Defendant and Appellant Frank Eddie Quintero.

Gail Harper, under appointment by the Court of Appeal, for Defendant and Appellant Raymond Salvador Ramirez.

John Steinberg, under appointment by the Court of Appeal, for Defendant and Appellant Juan Lucas Soto.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Margaret E. Maxwell and Marc A. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

Appellants Vincent Francisco Lopez, Frank Eddie Quintero, Raymond Salvador Ramirez, and Juan Lucas Soto were convicted after trial by jury of first degree murder, which was committed during the commission of robbery, and of two counts of second degree robbery. (Pen. Code, §§ 187, subd. (a), 190.2, subd. (a)(17), 211.)[1] It was found that Soto personally and intentionally discharged a firearm, causing death, as to the murder and robbery counts. (§ 12022.53, subd. (d).) Appellants were also convicted of assault with a deadly weapon and conspiracy to commit robbery. (§§ 245, subd. (a)(1), 182, subd. (a)(1).) The trial court found that Soto had suffered a prior robbery conviction within the meaning of the three strikes law. (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i).) Each appellant was sentenced to life without the possibility of parole for the murder, with sentences stayed on the remaining counts. Soto received a firearm enhancement of 25 years to life. Each appellant appeals from the judgment.

Lopez contends that the trial court erred in admitting irrelevant evidence of appellants' membership in a criminal street gang. He joins in all arguments raised by his coappellants to the extent such arguments apply to him.

Quintero contends that the trial court erred in failing to instruct the jury that, in order to find him liable for felony murder, it must find that he became an aider and abettor or rejoined the conspiracy before the victim was fatally wounded. He joins in all issues raised in coappellants' Opening Briefs that would affect the judgment in his case.

Ramirez contends (1) that the trial court erred in admitting evidence that he was a gang member; (2) that the evidence is insufficient to support his convictions; and (3) that the evidence is insufficient to support the robbery special circumstance. He joins in all arguments raised by his coappellants to the extent such arguments apply to him.

Soto contends (1) that the admission of Ramirez's hearsay statement that indirectly implicated him violated his right to confrontation; (2) that imposition of the firearm use enhancement on the murder count was an unauthorized sentence; and (3) that

---

[1] All further statutory references are to the Penal Code unless otherwise specified.

the use of his prior juvenile adjudication as a strike violated his federal constitutional right to due process. He joins in the contentions raised on behalf of his coappellants insofar as they are applicable to him.

FACTS

We view the evidence in accordance with the usual rules of appellate review. (*People v. Snow* (2003) 30 Cal.4th 43, 66.)[2] On the afternoon of August 20, 2002, Soto, driving the black Honda belonging to his girlfriend, Lorraine Calvillo, drove Quintero and Ramirez to the La Puente residence of Bobby Bionghi. Calvillo was in the front passenger seat. Lopez was either already at Bionghi's or came in Calvillo's car with the others. Bionghi, a former member of the Barrio Puente gang known as "Stranger," had known appellants for about a year or a year and a half through their memberships in various cliques of the gang.

After appellants arrived, while Lopez, Quintero and Ramirez were conversing with each other two or three feet from Soto and Bionghi, Soto asked Bionghi, in a "common loud tone of voice," if he would be the getaway driver for a robbery. Soto spoke about robbing a store. He removed a nickel-plated .357 revolver from the air filter compartment under the hood of Calvillo's car, and Bionghi observed two or three other guns there before Soto replaced the weapon. Lopez also spoke to Bionghi about the plan to commit robbery, mentioning a store in El Monte and a tax business around the corner from Bionghi's house that had an easily-accessible box full of money in the lobby. Bionghi did not recall whether either of the other two appellants, Ramirez and Quintero, spoke about the tax business. Although Bionghi did not speak with Ramirez at the time, he saw Soto speaking with Ramirez. Lopez stated that it would be a quick job because he knew exactly where the box of money was located. Bionghi, who was on parole, said he was not interested in participating.

---

[2] Quintero, Ramirez and Soto were tried by one jury, called the blue jury, and Lopez was tried by a second jury, called the red jury. We will specify those instances in which evidence was heard by one jury and not the other or where evidence was admitted against only particular defendants.

Appellants got back into Calvillo's Honda. Soto drove the vehicle a short distance. Calvillo, who was in the front passenger seat, heard them saying something about a liquor store, but when she asked what they were talking about, the men told her not to worry about it.

When Calvillo was asked at trial whether Soto said anything about what they were going to do, she testified that she remembered "something being said about -- that he knew that tax place, they were just going to go -- it was a clear box of money and that he was going -- and they were just going to go inside just to check it out and they would be right out." She testified that she remembered hearing Quintero say, "No, I don't want to go." She continued, "And I was like, ['']What, what are you talking about?['] And he tells Frankie [Quintero], ['']Oh, don't worry about it. We are not going there. I just stopped right here at this other place.['']"[3] After Soto parked the vehicle, Quintero got out of the car with the other three men, spoke briefly with them, and walked off with them. Calvillo remained in the car.[4]

While Ramirez stood outside, Lopez, Quintero and Soto entered the bookkeeping and income tax service operated by Carmen Castro (hereafter sometimes Carmen) and her brother, Camilo Castro (Camilo), located on Amar Road. In the lobby was a large clear donation box containing cash for the Abandoned in Nicaragua Foundation, a charitable foundation founded by Camilo. Camilo was in his rear office with Maria Lagos (Maria) and her teenage brother, Luis. When the three men entered, Carmen, who was in her front office, began screaming. Several gunshots were heard. Carmen died of a gunshot wound to the back of her head. The bullet was recovered and was determined to be a .38 special caliber or .357 magnum caliber bullet. A gunshot wound to Carmen's

---

[3] "No, I don't want to go" constitutes Quintero's statement in Calvillo's own words. She testified as to this same statement at two different times during the trial. At another point, defense counsel asked, "You heard Frankie say, ['']I don't want to be involved in this. I don't want to have anything to do with this;['] correct?" She replied, "Correct."

[4] Calvillo testified that she did not remember seeing anyone open the hood of her car either at Bionghi's house or after they drove to the business and parked the vehicle.

arm was consistent with a defensive movement, and a wound from a blunt object appeared on the front of her head.

Almost immediately after the shooting, one of the men entered Camilo's office. Maria saw two other men in the area behind him, closer to the front door. The man who entered the back office pointed a gun at Camilo, Maria, and Luis, ordered them to get under the desk, broke the office telephone, demanded their cell phones, threatened to shoot them if they still had phones, and took the wallet and car keys from Maria's purse. While this man was in Camilo's office, Camilo heard a commotion in the lobby and the sound of someone dropping the fax machine that was on top of the donation box. When he eventually emerged from his office, he found most of the money gone. The fingertip of a latex glove was later found on the floor near the donation box.

Charles Visitor, who operated the neighboring business, heard gunshots and went outside. He did not see anything and walked into the Castros' office. He saw three Hispanic men, two of them on the floor picking up money. Visitor tried to leave but Quintero grabbed him. Visitor managed to get outside, but Quintero pinned him against the window and struck him on the shoulder with an object that appeared to be a handgun. Quintero ran off. Soto left the office, struck Visitor on the back of the head with an object, and also ran off.[5] A third unidentified person ran past Visitor in the same direction as the others. Visitor then saw a dark colored Honda or Toyota, driven by a woman with at least three passengers, leave the area.

Appellants got back into Calvillo's car, leaving a trail of money behind them. Calvillo, who was in the driver's seat, saw Lopez, who got into the front passenger seat, with a lot of paper money in his pockets, and she heard Quintero and Soto saying they had money. She did not see any money on Ramirez. Calvillo testified that she had become concerned that they were going to do something and had gotten into the driver's

---

[5] Visitor was shown a photographic lineup containing Soto's picture. He identified the photograph of a different man, whom the police initially suspected of the offenses. The remaining photographs had been randomly selected for that lineup.

seat, intending to drive off, but they returned and jumped into the car after she turned it around. She was told to drive to her Rancho Cucamonga residence.

During the drive, the others asked Soto why he had shot the woman. He replied that he had shot her because she would not shut up after he told her to be quiet and struck her. Calvillo observed that Lopez and Soto each had a gun. Lopez said he had taken a woman's purse, wallet, license and credit cards, and he tossed some items out the window onto the freeway, stating that he did not want to have anything on him. Appellants stated that no fingerprints would be found because they had worn latex gloves and were throwing them out the car window on the freeway. Ramirez said that as he was standing outside, a Black man had also been outside and he had hit the man, and one of the others said that he had hit him also.

When they arrived at Calvillo's residence, Lopez, Quintero, and Soto emptied their pockets and the men divided the money four ways. They used the remaining $20 of the money to buy gas for Calvillo's car when they went to the store. The men stated that anyone who spoke about the episode would be "taken out." Calvillo drove Quintero and Ramirez back to La Puente, then Lopez finally left with Soto when Lopez's girlfriend, whom he had been calling repeatedly to ask for a ride, finally arrived.

About an hour after appellants left his house, Bionghi heard sirens and a helicopter flying above his house, which was a block from the tax business, and he "put two and two together with what happened."

Lopez's jury heard evidence that Lopez called Bionghi after the group left Biongi's house and told him that they had "fucked up" and were going to Rancho Cucamonga. Late that night, Lopez called Bionghi from Rancho Cucamonga and said he wanted to talk to him alone the next day. The next day, Lopez told Bionghi, in person, that he and the other three appellants had "robbed the place on Amar," that Ramirez had stood outside and that the other three had gone inside with guns, and that Soto had "f'd up" and had shot a woman at point-blank range because she started to scream. Bionghi acknowledged that, at this time, he was using drugs and often went for two or three days without sleep, and that he had not made notes of his conversations with Lopez.

Several months later, in December 2002, Bionghi was arrested on drug charges, a second strike case, and he reported to police his conversation with appellants on the date of the offenses, hoping to get a break on his drug case.[6] Based on his statements, police contacted Calvillo, who also provided information. Officers then searched Ramirez's residence and found a box of .38 special caliber bullets, similar to the bullet that killed Carmen Castro and the expended bullets found at the scene. Bionghi testified that he had not come forward earlier because he "could be dead the next day." At the time of trial, he was living in another state.

Calvillo had known Soto for a few months and had been dating him for a few weeks at the time of the offenses. She had met the others through him. She broke up with him shortly after the offenses. She testified against appellants under a grant of immunity, acknowledging at trial that she had been told that if she testified truthfully, she would not be prosecuted for the robbery and murder.

On January 29, 2003, appellants were placed in adjoining cells in a court lockup. The cells contained hidden microphones, and the juries heard portions of audiotaped conversations between Soto and his codefendants. One conversation was played before both juries, to be considered only as to Lopez and Soto, in which Soto informed Lopez that Stranger (Bionghi), who was in protective custody, had told the police "[e]verything you told him" and that "they got [Calvillo] too." Soto told Lopez that a "loose leak" would be taken care of in April, stating, "You know who gets out in April, right?" and that "[h]e'll handle that. Fuckin', uhm, Stranger." Lopez stated that he did not believe Bionghi would testify against them because "[h]e knows what's gonna crack if he does." Soto told Lopez that he had just run into Huero, a "homie" from East Side Puente, and he told Huero to "get at Temper about Stranger." Soto also stated, "She will get handled."

---

[6] After Bionghi spoke with police, he was released on his own recognizance, and he was then arrested again on drug charges. He pled guilty to the first charge and admitted the prior strike, a robbery conviction, after which he was sent to a drug program under Proposition 36. The second arrest did not result in charges. Detective Brian Steinwand, the investigating officer, testified that he had had no input with respect to assistance for Bionghi in return for Bionghi's testimony.

Lopez stated that he was going to say he was "never even there" and was "trying to get a[n] alibi for [him]self." Soto stated, "But the only thing that's gonna fuck us is [Calvillo], fool." Lopez said, "[H]ey, you know what your excuse is? . . . [J]ust say you were together, you broke her heart and she's just trying to get us in a wreck."

Soto then told Lopez what "she" had said about him, including that he drove her someplace where "we" were talking and "she didn't know what we were talking about," that "we popped open the hood and she didn't know what was going [on]," that they drove up Amar, that they stopped and Soto told her that he "was gonna handle some business and we'll be right back, and we popped open the hood again," that she parked the car on the other side of the street, that she heard gunshots and saw "us all running out," and that she was going to try to leave but she saw them all running out and just waited. Soto continued telling Lopez that "she" said that when they jumped in the car, "you guys were asking me . . . what happened and shit," and Soto answered that "that bitch was yelling and I smoked her. That's what she said I said." They all went to "her pad," and Soto threatened that if "she" said anything about it, he would kill her and her family. Then someone named Maria came and picked them up.

Soto told Lopez what Bionghi had said, including that Lopez was at his house, that "we started talking" and "[w]e asked him to be our get away driver," that originally they were supposed to "do a hit in El Monte," that Bionghi stated "that we had some gloves . . . Fuckin' latex gloves," that he saw where "we put the gun . . . inside of the hood in the car," and that Bionghi mentioned "a .357." Soto further told Lopez that Bionghi said that later that day, Lopez called Bionghi and told him that Soto had "fucked up" and that they would call him later; Lopez later called him and told him that Soto "ended up smokin' a bitch."

In another conversation introduced only as to Lopez and Soto, Lopez told Soto, "I never thought that fool [Bionghi] would do me like this." In another conversation, Soto said that someone named Angela called him and said she heard that the police were looking for him "for a robbery and . . . shooting." Soto recounted, "I was like what? Fucking crazy, bitch." Lopez laughed, and Soto said, "I got stupid with her, you hear

me?" Lopez said he needed to "get a hold of Casper," who was getting out pretty soon and who owed him a "parro," and he said, "Tell him get at -- get at Stranger."

In evidence introduced only as to Quintero and Soto, the blue jury heard Soto tell Quintero that he would tell his girlfriend "what to tell Gooney" so that "whatever we got -- got to be tooken care of, will [be] tooken care of." He said that Gooney "could take somebody out right hear [*sic*]." The two discussed the upcoming preliminary hearing, at which all the evidence against them would be presented, and both stated they believed they would be getting out. Soto then said, "I know Gooney can find somebody to handle that."

Both juries heard another conversation in which Quintero told Soto that when his attorney had mentioned "the homie . . . from the varrio" who was going to testify, Quintero had falsely told his attorney that the man was angry at him because he had had sex with the man's girlfriend and that was why the man was testifying against him. Quintero advised Soto that "you gotta make it look like he hates you." The trial court admonished the juries that, in general, this evidence could be considered only as to Quintero and Soto, but that it could be considered as to all four appellants to the extent it affected their determination of the credibility of a defense witness, Stephen Anno.

In evidence introduced only as to Ramirez and Soto, the jury heard a conversation taped in the lockup on March 27, 2003, in which Ramirez stated that his brother had told him a security guard had identified "all three of you." Soto told him that there had been no security guard. He told Ramirez that "just mother fuckers are talking" and that he would find out who was talking. Ramirez said, "But, uh, there has to be -- there has to be witnesses, dog, besides that Ruca, uh, what's her name?" Soto told him, "There ain't no other witness, dog." Soto stated that if he was convicted, he was going to "reach[] out and touch[] somebody."

In a conversation admitted only against Soto and Lopez, which was taped in the lockup on April 15, 2003, right after appellants had been held to answer at the preliminary hearing, Lopez stated that he believed he and Soto would be on the same bus as Bionghi. Lopez said that he was "already plotting on how the fuck to, uh, AWOL . . .

when the verdict comes in." He said he was "[t]hinking about rushing them" because "[w]e don't got shit to lose." Soto stated that he was "gonna take off on the D.A., " and Lopez, laughing, said that he was going to "take off on whoever I see . . . whoever's next to me."

Evidence was introduced only as to Ramirez regarding Ramirez's statements made during an interview with Los Angeles Sheriff's Detective Brian Steinwand in January 2003. Ramirez told the detective that he had gone to the business but had not entered, and that he could have "gotten away with it claiming that he wasn't there," because he did not think he had been observed, but he "decided not to fight the case." He told the detective that the evidence against him was strong and that he would probably be convicted, since he believed a woman would "say things" and "give up everything" when the police spoke to her.

In defense, Soto and Lopez introduced the testimony of Stephen Anno, an individual with a prison record who was in jail awaiting sentencing for grand theft and receiving stolen property. Anno did not know appellants, but he had become friends with Bionghi in jail. Anno testified that in February 2003, Bionghi, who was in protective custody, told Anno that the police had given him some information about the robbery-murder case and had told him that if he would "give up some names" he could "walk free" on his own three strikes case. Bionghi told Anno that Soto had burned him on a drug deal and he was going to testify falsely against Soto, although Soto was not guilty of the crimes. In March 2003, Soto was transferred to a nearby cell, and Bionghi yelled at Soto that he "had to do what he had to do" to go free. Anno did not think it was fair that Bionghi would falsely accuse a young man just to obtain his own freedom. After Soto told Anno that the jury had been selected in his trial, Anno let Soto know that he would testify about Bionghi's remarks.

None of the appellants testified.

DISCUSSION

I. Evidence of gang affiliation was properly admitted.

Lopez and Ramirez, joined by Quintero and Soto, contend that the evidence of their gang membership was irrelevant, that its admission violated Evidence Code sections 1101, subdivision (b) and 352, and that the admission of this evidence, without a limiting instruction, constituted prejudicial error and violated their federal constitutional rights to due process and a fair trial. Lopez, joined by Quintero and Soto but not by Ramirez, further contends that if any such claims were waived for failure of counsel to adequately object, counsel thereby provided ineffective assistance. These related contentions must fail.

Bionghi testified, without objection, that he was a former gang member known as Stranger and that appellants were members of cliques of his former gang. He testified that he was a member of one clique, Ramirez was a member of a second clique, and the other three appellants were members of a third clique. Bionghi testified that Lopez was known as Dopey, Soto was known as Blinks, Quintero was known as Frankie, and Ramirez was known as Lizard or Baby Lizard. Calvillo identified a photograph of each appellant from a photographic display entitled "Puente Gang." No objection was lodged as to this procedure.

During Detective Steinwand's testimony about the first tape recorded jailhouse conversation heard by the jury, that between Soto and Lopez, the detective was asked about the reference to "Temper," and he replied that he did not know anyone by that name who was involved in the Puente gang. He stated that he had five years' experience as a gang detective and was familiar with a Puente gang known as the East Side gang. When shown an entry in Lopez's address book, the detective indicated that the name Temper was followed by the letters "E-S."

The prosecutor then asked Detective Steinwand whether, as a gang detective, he had become aware "especially in gang related murder cases that often gang members out on the street are recruited to perhaps assist inmates in getting assistance in their cases?" The detective replied, "Yes." The prosecutor asked, with reference to the transcript of

the recorded conversation, "when there's talk about individuals like Temper and I believe other monikers were mentioned that have yet to be known, like Danny Boy, . . . can you form an opinion based upon your gang experience whether or not these individuals were being essentially considered utilizing them as tools to get at either Stranger [Bionghi] or [Calvillo] at least within this recorded information?" The detective replied, "Yes." Counsel for Lopez objected on grounds of inadequate foundation and relevance, arguing that the matter was "within the purview of the jury." The trial court indicated that the issue should be taken up after all of the taped conversations had been played before the juries. Counsel for Lopez agreed. Detective Steinwand was not asked again for an opinion on gang-related matters, and it does not appear that the issue was discussed further. The prosecutor mentioned the fact that appellants were gang members in his opening and closing arguments.

In the absence of any objection to the introduction of gang testimony by Quintero, Ramirez or Soto, or of any indication that they wished to join in the objection posed by Lopez's counsel, the issue is waived as to them. (*People v. Mitcham* (1992) 1 Cal.4th 1027, 1048.) For lack of an objection under Evidence Code sections 1101 and 352, or of any objection to gang-related testimony apart from the testimony of Detective Steinwand, such claims of error are waived as to all appellants. (*People v. Champion* (1995) 9 Cal.4th 879, 918, 923.) Moreover, Lopez's counsel failed to raise any constitutional objections, and these claims are also waived. (*People v. Catlin* (2001) 26 Cal.4th 81, 122-123; *People v. Champion*, *supra*, at p. 918.) Because Lopez, joined by Quintero and Soto, raises an alternate claim of ineffective assistance of counsel, however, we will address these issues.

The trial court has broad discretion in determining the relevance of evidence. (*People v. Cash* (2002) 28 Cal.4th 703, 727.) Gang-related testimony in this case was not mere propensity evidence. (See, e.g., *Mitchell v. Prunty* (9th Cir. 1997) 107 F.3d 1337, 1342, disapproved on other grounds in *Santamaria v. Horsley* (9th Cir. 1998) 133 F.3d 1242, 1248.) The evidence that Calvillo and Bionghi were aware that appellants were gang members, and that incarcerated gang members may enlist other gang members who

are not in custody to assist them, was relevant to explain the jailhouse conversations, in which appellants discussed retaliation against the witnesses or efforts to prevent them from testifying. This tended to establish appellants' consciousness of guilt and explained Calvillo's and Bionghi's initial reluctance to come forward for fear of retaliation, which bore on the credibility of the witnesses. (See *People v. Sanchez* (1997) 58 Cal.App.4th 1435, 1449-1450.)

Lopez's counsel objected on the ground that Detective Steinwand's testimony was irrelevant because the opinion sought from the detective was "within the purview of the jury." However, the subject matter was sufficiently beyond common experience to constitute a proper matter for expert opinion. (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1370-1371; *People v. Gamez* (1991) 235 Cal.App.3d 957, 965, disapproved on other grounds in *People v. Gardeley* (1996) 14 Cal.4th 605, 624, fn. 10.) Furthermore, the gang evidence was extremely limited, involving only testimony regarding appellants' gang affiliations and nicknames and evidence that incarcerated gang members may recruit fellow gang members who are not incarcerated to assist them. Such evidence was not more prejudicial than probative within the meaning of Evidence Code section 352, and it did not pose an intolerable risk to the fairness of the proceedings or the reliability of the outcome. (*People v. Waidla* (2000) 22 Cal.4th 690, 724; *People v. Champion*, *supra*, 9 Cal.4th at p. 923.)

The admission of this testimony under ordinary rules of evidence did not implicate the federal Constitution. (*People v. Marks* (2003) 31 Cal.4th 197, 226-227.) Moreover, since there were permissible inferences to be drawn from evidence of appellants' gang membership, no due process violation can be found. (See *People v. Steele* (2002) 27 Cal.4th 1230, 1246.)

Even were the gang evidence erroneously admitted, moreover, such error would be nonprejudicial under the applicable *Watson* (*People v. Watson* (1956) 46 Cal.2d 818, 836) standard. (*People v. Marks*, *supra*, 31 Cal.4th at pp. 226-227.) Lopez acknowledges that the evidence of his participation in the robbery was strong, but asserts that the challenged evidence prejudiced the jury with respect to his claim that he lacked

the requisite state of mind to be liable for the special circumstance. Ramirez claims that the case against him was the weakest and points out that the evidence suggests that the killing was not intended. We conclude that a different outcome would not have resulted as to any of the appellants had the gang evidence not been introduced. The evidence against Ramirez as to his participation in the conspiracy to rob and the robbery was strong, a conclusion reached by Ramirez himself, and we note that the felony-murder doctrine applies to killings committed in the course of a robbery even when they are unintended. Indeed, the evidence of appellants' guilt was overwhelming, without regard to their shared gang membership, and amply established their agreement to embark upon an armed robbery whose circumstances evidenced a reckless indifference for human life. Apart from the testimony of Calvillo and Bionghi, the recorded jailhouse conversations provided strong indications of appellants' guilt, including Soto's mention of facts concerning the offenses, Lopez's statements regarding his intent to manufacture an alibi and to manufacture a rationale for Calvillo's testimony, and Quintero's attempt to manufacture a rationale for Bionghi's testimony. The jailhouse conversations also revealed Lopez's and Soto's plans to solicit help in silencing Calvillo and Bionghi, as well as their intent to use violence against the prosecutor and others. Ramirez's admissions to Detective Steinwand established his participation in the felony that became a felony murder, and a box of bullets of the same caliber as that which killed the victim was found in his house.

In addition, Calvillo's testimony included a reference to appellants discussing their use of latex gloves and throwing them out the car window, and in fact the fingertip of a latex glove was found at the scene of the murder. The injury from a blunt object observed on the front of the murder victim's head corroborated Calvillo's testimony that Soto stated he shot the victim because she would not shut up when he struck her.

Considering the gang evidence actually introduced, Detective Steinwand testified that "often gang members out on the street are recruited to . . . assist inmates in getting assistance in their cases," and he answered "Yes" when asked if he could offer an opinion as to "whether or not these individuals were being essentially considered utilizing them

as tools to get either [Bionghi] or [Calvillo]." However, the effect of the objection was to prevent the witness from offering that opinion. Moreover, the evidence of gang membership did not include any details concerning the activities of appellants' gangs or their own level of involvement. On this record, any error in the introduction of gang evidence would be nonprejudicial, and, given the state of the record and the nature of the gang testimony, there was no harm resulting from the absence of a limiting instruction. (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1051-1052, 1054 [trial court has no sua sponte obligation to give a limiting instruction; absence of such instruction nonprejudicial].)

Accordingly, since Lopez, Quintero and Soto cannot establish prejudice in the failure of their respective counsel to raise the objections that would have permitted review of the issues now raised, reversal for ineffective assistance of counsel is not warranted. (*People v. Boyette* (2002) 29 Cal.4th 381, 430-431; *People v. Sanchez*, *supra*, 58 Cal.App.4th at p. 1450.)

II. The evidence was sufficient to support the convictions and special circumstance finding as to Ramirez.

Ramirez contends that the evidence was insufficient to support his convictions and to support the finding, as to him, of the robbery-murder special circumstance.[7] These contentions are without merit.

On appeal, we determine "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citations.] We examine the record to determine 'whether it shows evidence that is reasonable, credible and of solid value from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.] Further, 'the appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' [Citation.]

---

[7] We do not consider these issues as to Quintero, Lopez or Soto, since the facts underlying Ramirez's contentions are inapplicable to them and they have not presented arguments supporting such claims.

This standard applies whether direct or circumstantial evidence is involved." (*People v. Catlin*, *supra*, 26 Cal.4th at p. 139.) A judgment will not be reversed for insufficiency unless "'upon no hypothesis whatever is there sufficient evidence to support [the conviction].'" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

The jury was instructed on principles of aiding and abetting and was advised that an aider and abettor is guilty of first degree murder if a victim was killed by a principal in the commission of robbery. It was instructed that coconspirators are guilty of first degree murder if several individuals conspired to commit robbery and the victim was killed by one of them in the perpetration of that crime, and the killing was done in furtherance of the common design or was an ordinary and probable result of the pursuit of that purpose. It was also instructed that it could return a verdict of guilt of assault if the assault was a natural and probable consequence of robbery.

Ramirez asks us to reweigh the evidence in the light most favorable to his version of events. That is neither the proper function of an appellate court, nor the appropriate standard of review. (*People v. Snow*, *supra*, 30 Cal.4th at p. 66; *People v. Culver* (1973) 10 Cal.3d 542, 548.) Contrary to Ramirez's suggestion, the evidence established far more than his gang membership, which alone would not constitute sufficient evidence to support the verdicts. (See, e.g., *Mitchell v. Prunty*, *supra*, 107 F.3d at p. 1342.)

The evidence established that after all four appellants arrived at Bionghi's residence, at least Quintero, Ramirez and Soto arriving in the same car, Soto asked Bionghi to be the getaway driver for a robbery and Lopez explained to Bionghi the circumstances of the proposed robbery. When Soto was asking Bionghi to be the getaway driver, he spoke in a "common loud tone" and the other three appellants stood within two or three feet of them. Soto, who spoke with Ramirez during this encounter, revealed the presence of several firearms. After Bionghi declined to participate, Ramirez got into the car with Soto, Quintero, and Lopez. As they drove to the location, the men talked about a liquor store as well as the fact that they were going to check out a tax business that had a box of money. Their purpose was clear enough to cause Quintero to state, at one point, that he did not want to go.

When Soto parked the car, all four men got out and went toward the tax business. When the other three appellants entered the business, at least two of them were holding firearms. It may reasonably be inferred that even if Ramirez did not himself have a gun, he saw the others arming themselves. Ramirez stood outside while the others went inside, fired several shots at Carmen after she screamed, dropped the fax machine, broke into the box of money in the front of the establishment, and robbed one of the individuals in the back room of the business. Visitor heard the gunshots from his business next door; it may reasonably be inferred that Ramirez, who was standing outside, did as well, yet he did nothing to investigate or to seek help for the victim. After the robberies and murder, the other three men ran from the premises, two of them striking Visitor,[8] and Ramirez got into the getaway car along with them. He shared equally in the proceeds carried away by the others. He subsequently admitted his presence outside the tax business and stated that since he did not believe the neighbors saw him, he could have gotten away with it, but that the evidence was strong against him and that a woman would say things and he would probably be convicted.

Aiding and abetting may be shown by a defendant's presence at the scene, his relationship with the other perpetrators, and his conduct before and after the offense. (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409.) Evidence may establish a conspiracy "'if it supports an inference that the parties positively or tacitly came to a mutual understanding to commit a crime. [Citation.] The existence of a conspiracy may be inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy. [Citations.]' [Citation.]" (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1135.) The jury here heard ample evidence apart from the fact of Ramirez's gang membership that established his guilt of the charged offenses. It could certainly have concluded from this evidence that the four appellants, including Ramirez, conspired and agreed to commit an armed robbery in which Ramirez served as the lookout, during the commission of which Carmen was killed, and it could

---

8 Calvillo testified that, in the car, Ramirez stated that he had struck Visitor.

well have concluded that the assault was a natural and probable consequence of the target offense of robbery. It could also have determined that the killing of Carmen by one of the conspirators was done in furtherance of, or was an ordinary and probable result of, the robbery. The inferences properly drawn from the evidence, including Ramirez's own statements, go beyond mere speculation. Ample evidence supports the determination that Ramirez was guilty of the offenses.

The same standard of review applies to a challenge to a special circumstance finding. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 496-497.) The prosecutor argued that Ramirez was an aider and abettor. To find a robbery-murder special circumstance true where the defendant is an aider and abettor and not the actual killer, the jury must find "that the aider and abettor had intent to kill or acted with reckless indifference to human life while acting as a major participant in the underlying felony. (§ 190.2, subds. (c), (d).)" (*People v. Proby* (1998) 60 Cal.App.4th 922, 927, fn. omitted.) "Reckless indifference to human life" means "that the defendant was subjectively aware that his or her participation in the felony involved a grave risk of death." (*People v. Estrada* (1995) 11 Cal.4th 568, 577.)

Ramirez again asks that we reweigh the evidence. Again, we view the evidence in the light most favorable to the jury's determination. (*People v. Bustos* (1994) 23 Cal.App.4th 1747, 1754.) Ramirez went to the scene with the other conspirators and acted as a lookout while the others, some or all of whom were armed with handguns, entered the premises and carried out the robberies. The evidence and the inferences properly drawn therefrom amply support the determination that he aided and abetted in the robbery that resulted in Carmen's death while acting as a major participant and with reckless indifference to human life.

III. The jury was properly instructed on Quintero's culpability as a conspirator or aider and abettor.

Calvillo testified that while she and appellants were in the car as Soto drove to the tax business, Quintero said, "No, I don't want to go." Quintero contends that the jury should have been instructed that, to find him guilty of felony murder, it had to find that

he became an aider and abettor or rejoined the conspiracy before Carmen was shot. This contention is without merit.

As Quintero points out, the first degree felony-murder rule does not apply to aiders and abettors or conspirators "who join the felonious enterprise only after the murder has been completed." (*People v. Pulido* (1997) 15 Cal.4th 713, 726; accord, *People v. Jones* (2003) 30 Cal.4th 1084, 1113.) As to an individual who was not the actual killer, "a conspirator is not, simply by membership in the conspiracy, made liable for a substantive offense committed pursuant to the conspiracy *before* he or she joined the conspiracy. [Citations.]" (*People v. Pulido*, *supra*, at p. 724.) Similarly, in a prosecution under an aiding and abetting theory, "complicity in a felony murder [does not] extend to one who joins the felonious enterprise after the killing has been completed." (*Id*. at p. 722.) Thus, in the case of a defendant who is not the actual killer, where substantial evidence would permit the jury to find that that defendant began aiding and abetting a robbery perpetrated by another only after the principal actor killed the victim, the defendant may not be found guilty of felony murder, and the instructions may require modification to so inform the jury. (*Id*. at p. 728.)[9]

Quintero's jury was instructed in accordance with CALJIC No. 8.27 that if a person "is killed by any one of several persons engaged in the commission . . . of . . . robbery, all persons, who either directly and actively commit the act constituting that crime, or who with knowledge of the unlawful purpose of the perpetrator of the crime and with the intent or purpose of committing, encouraging, or facilitating the commission of the offense, aid, promote, encourage, or instigate by act or advice its commission, are guilty of murder of the first degree . . . ." The jury was also instructed pursuant to CALJIC No. 8.21.1 that "for the purposes of determining whether an unlawful killing has

---

9 In *Pulido*, the Supreme Court did not reach the issue of whether the trial court had a sua sponte duty to so instruct because the defendant could not demonstrate prejudice from the asserted instructional error. (*Pulido*, *supra*, at p. 726.) In *People v. Jones*, *supra*, 30 Cal.4th at page 1113, the Supreme Court observed that there was no authority for the claim that the trial court had a sua sponte duty to give such an instruction.

occurred during the commission . . . , the commission of the crime of robbery is not confined to a fixed place or a limited period of time." Quintero argues that CALJIC No. 8.27 should have been modified as indicated in *People v. Pulido*, *supra*, 15 Cal.4th at pages 728-729, because, as given, the instructions permitted a conviction of felony murder without reference to the time frame of the aiding acts by the aider and abettor.

However, the record does not support the application of these principles in Quintero's case. Quintero asserts that, having heard Soto state only that they were "going to check something out," he ended his liability for a co-conspirator's acts by stating that he did not want to have "anything to do with this."[10] He further asserts that he went along with the others in the belief that Soto was only going to check out the business and that, trapped into participating, he assisted in the robbery after Soto shot the victim.

To the contrary, the record establishes that, at some point during the short drive in the car, Quintero stated, "No, I don't want to go," Calvillo asked what was going on, and an unidentified person, presumably Soto, who was driving, told Quintero, "Oh, don't worry about it. We are not going there. I just stopped right here at this other place." The testimony thus indicates that Quintero's hesitation had to do with another location, presumably the liquor store earlier mentioned at the time Calvillo asked what was going on, and that after Quintero was assured that they were "not going there" but were going to "this other place," he then got out of the car with the others and entered the business. Quintero's reading of the record is mere speculation not supported by the evidence. Even assuming that the trial court had a sua sponte duty to so instruct, the record here does not contain "substantial evidence [that] would permit the jury to find [that Quintero] began aiding and abetting [the robbery] only after the killing occurred." (*People v. Pulido*, *supra*, 15 Cal.4th at p. 728.)

Moreover, any error in the failure of the trial court to modify CALJIC No. 8.27 to instruct the jury on the principles set forth above would be nonprejudicial, even given the

---

10 Quintero sets forth the version of his statement paraphrased by defense counsel rather than the actual statement to which Calvillo twice testified.

instructions containing the "temporal error" that were actually delivered on accomplice liability for felony murder and on the duration of robbery, because "'[t]he factual question posed by the omitted instruction was necessarily resolved adversely to defendant under other, properly given instructions.'" (*People v. Pulido*, *supra*, 15 Cal.4th at pp. 726-727.) Quintero's jury was instructed in accordance with CALJIC No. 8.81.17 that, in order to find the special circumstance true, it had to find that "[t]he murder was committed while the defendant was engaged in or was an accomplice in the commission or attempted commission of a robbery. . . ." Contrary to Quintero's claim, the instructions were not confusing on this point. The jury returned a true finding on the allegation "that the murder of CARMEN CASTRO was committed by defendant, FRANK EDDIE QUINTERO while said defendant was engaged in the commission or attempted commission of the crime of ROBBERY, within the meaning of PENAL CODE SECTION 190.2(a)(17)." It also found him guilty of conspiracy to commit robbery. Since the jury necessarily found that Quintero's decision to aid and abet the robbery began before or during the killing, any error in the omission of the modification of the instruction was nonprejudicial. (*People v. Pulido*, *supra*, at p. 727; *People v. Hodgson* (2003) 111 Cal.App.4th 566, 577.)

IV. The admission of Ramirez's hearsay statement did not violate the confrontation rights of Soto or Quintero.

Soto and Quintero objected "on the grounds of hearsay, *Aranda*" (*People v. Aranda* (1965) 63 Cal.2d 518) to the admission of Ramirez's statement to police.[11] The trial court stated, "The only problem is that I think [Ramirez] does in some points in that interview refer obliquely to others, going in and out, so forth, how long they took." The trial court indicated those portions of the statement that would be admissible, stating, "I want to be quite careful. [¶] It does refer to other individuals entering, it does refer to them coming out and hitting the male Black [apparently Visitor] so forth and so on. [¶] Those are statements that, maybe in the grand scheme of things, aren't terribly damaging

---

11 The statement was not heard by Lopez's jury.

given the large quantity of information the jurors have heard, together with the I.D.'s. But, in fact, I think that *Aranda* would probably bar those references. Even though they don't identify the co-defendants, it's no secret who they are, given the fact the young lady has identified them all, as has Mr. Bionghi . . . ." After requiring that the prosecutor redact the statement to omit the indicated references, and agreeing to give a limiting instruction, the trial court overruled the defense objection to the introduction of the statement, stating, "I don't think it frankly casts any blame on your two clients."

Pursuant to a stipulation between the prosecutor and Ramirez's counsel, the following redacted version of Ramirez's statement was read to the blue jury: "That he admitted going to the scene in a vehicle but denied entering the business; [¶] He admitted that he stood nearby and saw a male Black outside. He did not believe the male Black saw him; [¶] That he, Mr. Ramirez, could have gotten away with it claiming that he wasn't there, but he didn't think that the neighbors saw him but decided not to fight the case; [¶] He says that the evidence is strong against him and that he will probably get convicted anyway since a female will say things anyway, and when the police say they have to talk to her, Mr. Ramirez responded, yeah, she'll give up everything, though." The jury was informed that the statement had been recorded. The trial court instructed the jury that the statement was admissible only to Ramirez and not as to any other defendant.

Soto, joined by Quintero, contends that his Sixth Amendment right to confrontation was violated by the admission of Ramirez's hearsay statement. He argues that the language "she'll give up everything" effectively adopted Calvillo's testimony, which included Soto's statement that he shot Carmen. Citing *People v. Schmaus* (2003) 109 Cal.App.4th 846, a case involving the statement of a nontestifying codefendant that constituted inadmissible double hearsay, Soto claims that Ramirez's statement adopting Calvillo's testimony thereby indirectly implicated him and violated his right to confrontation pursuant to *Bruton v. United States* (1968) 391 U.S 123 (*Bruton*). He further argues that the admission of Ramirez's statement violated his right to

confrontation as set forth in *Crawford v. Washington* (2004) 541 U.S. ___ [124 S.Ct. 1354] (*Crawford*).

In *Bruton*, the United States Supreme Court held that a defendant is denied his Sixth Amendment right of confrontation when the confession of his nontestifying codefendant that names and incriminates him is introduced at their joint trial, even where the jury is instructed to consider the confession only against the codefendant. (*Bruton*, *supra*, 391 U.S. at pp. 124-126, 135-136.)[12] The Supreme Court reasoned that, even when so instructed, jurors cannot be expected to ignore the statements of one defendant that are "powerfully incriminating" as to another defendant. (*Id*. at pp. 135-136.) However, in *Richardson v. Marsh* (1987) 481 U.S. 200 (*Richardson*), the Supreme Court held that "the Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when, as here, the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence." (*Id*. at p. 211, fn. omitted.) The Supreme Court reasoned that *Bruton* was a "narrow exception" to the general rule that a jury may be expected to obey a limiting instruction, because a jury might not be able to disregard a "'powerfully incriminating'" confession by a codefendant that implicates the defendant. In contrast, a codefendant's confession that is not incriminating on its face, but becomes so "only when linked with evidence introduced later at trial," is more likely to be disregarded by a properly instructed jury. (*Richardson*, *supra*, at p. 208.)

Thus, as the California Supreme Court explained, under *Richardson* "a defendant's rights under the confrontation clause are not violated by the admission in evidence of a codefendant's confession that has been redacted 'to eliminate not only the defendant's name, but any reference to his or her existence,' *even though the confession*

---

12 To the extent the judicially declared rule of practice set forth in *People v. Aranda, supra*, 63 Cal.2d 518 requires the exclusion of relevant evidence that would not be excluded under federal constitutional law, it was abrogated in 1982 by Proposition 8. (*People v. Fletcher* (1996) 13 Cal.4th 451, 465.) To the extent *Aranda* corresponds with *Bruton*, it was not abrogated by Proposition 8. (*People v. Orozco* (1993) 20 Cal.App.4th 1554, 1564.)

may incriminate the defendant when considered in conjunction with other evidence properly admitted against the defendant. [Citation.]" (*People v. Fletcher*, *supra*, 13 Cal.4th at p. 456, italics added.)

The trial court's observation that it was "no secret who they are," given Calvillo's and Bionghi's testimony, referred to the portions of the statement potentially implicating the others that were ultimately redacted. Ramirez's statement itself, as heard by the jury, did not facially or powerfully incriminate either Soto or Quintero. The statement, as redacted, made no reference at all to the existence of another perpetrator. It is simply too great a stretch to deem the reference to a female who "will say things" and will "give up everything" to constitute a link to incriminating testimony strong enough to overcome the effect of the limiting instruction. *People v. Schmaus*, *supra*, 109 Cal.App.4th 846, on which Soto relies, is inapposite, because the statement there involved a reference to "another guy" that violated the defendant's right to confrontation because the reference to the defendant's name was merely replaced by a symbol, as explained in *Gray v. Maryland* (1998) 523 U.S 185, 192. (*People v. Schmaus*, *supra*, at pp. 855-856.) We reject Soto's claim that the references in Ramirez's statement to what a woman would say are analogous to inadmissible double hearsay; in any event, no objection was made on this ground in the trial court. (*People v. Waidla*, *supra*, 22 Cal.4th at p. 717.)

Ramirez's statement is even more remote in terms of incriminating his codefendants than the one considered in *People v. Hampton* (1999) 73 Cal.App.4th 710, which was found not to violate the defendant's right of confrontation. There, in a confession, the codefendant mentioned that he had obtained a ski mask and gun from a vehicle, and other trial testimony indicated that the vehicle was driven by the defendant. (*Id*. at pp. 713-716.) The court held that the codefendant's statements did not powerfully implicate the defendant and their admission with a limiting instruction did not violate the defendant's right of confrontation. "This is not a 'powerfully incriminating,' 'expressly implicat[ing]' codefendant confession which, under the narrow *Bruton* exception, a jury cannot ignore even with a limiting instruction. It is instead an indirect and less vivid implication as to [the defendant] which, under *Richardson v. Marsh*, the jury can be

presumed to have ignored in light of the instructions and argument that [the codefendant's] statement was admitted only against [him] and may not be considered against [the defendant]." (*People v. Hampton*, *supra*, at p. 720.)

The references here were an even more "indirect and less vivid implication" as to Soto and Quintero, and the jury can be presumed to have ignored them, as it was instructed to do. In view of the fact that Ramirez's statement did not refer to the existence of any other perpetrator, as well as the numerous admonitions to the jurors that particular portions of the testimony were to be considered only as to particular defendants, including but not limited to the stipulation as to Ramirez's statement, we conclude that the trial court's admonition that Ramirez's statements could be considered only as to him was adequate to protect the other appellants' Sixth Amendment rights.

Finally, Soto's and Quintero's *Crawford* claim lacks merit. In *Crawford*, the United States Supreme Court held that the admission of hearsay that is testimonial in nature constitutes a violation of the Sixth Amendment right of confrontation where the declarant is unavailable to testify at trial and the defendant had no prior opportunity to cross-examine the declarant. (*Crawford*, *supra*, 124 S.Ct. at p. 1374.) The Supreme Court did not define "testimonial," but indicated that "[w]hatever else the term covers, it applies at a minimum to . . . police interrogations." (*Ibid*.) Thus, Ramirez's statement was testimonial. The question here is whether it constituted hearsay that violated Soto's and Quintero's confrontation rights.

In this case, the jury was expressly instructed that Ramirez's statement was to be considered against Ramirez only. Thus, no hearsay statement was introduced against Soto or Quintero. In *Bruton*, the Supreme Court held that jurors cannot be expected to ignore the powerfully incriminating statements of one defendant implicating another, even if they are instructed to do so, and in such a case a violation of the right of confrontation occurs. (*Bruton*, *supra*, 391 U.S. at pp. 135-136.) However, in *Richardson*, the court limited that holding, declaring that when a codefendant's statement has been redacted to eliminate any reference to the existence of another defendant, the jury *can* be expected to obey an admonition that the statement is admissible only as to the

declarant. In such a case, there is no violation of the right of confrontation. (*Richardson*, *supra*, 481 U.S. at pp. 208, 211.) In this case, since the admission of Ramirez's statement did not violate Soto's or Quintero's confrontation rights under *Bruton*, there was no hearsay that violated their confrontation rights under *Crawford*.[13]

V. The section 12022.53, subdivision (d) enhancement was properly imposed.

Soto was sentenced to life without parole in accordance with the special circumstance finding under section 190.2, subdivision (a)(17), with a 25-year-to-life firearm enhancement pursuant to section 12022.53, subdivision (d). He contends that the imposition of this enhancement constituted an unauthorized sentence, because subdivision (j) of section 12022.53 provides that "the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment." He argues that section 190.2, subdivision (a)(17) constitutes such a provision providing for a longer term. This contention lacks merit.

We agree with the determination in *People v. Chiu* (2003) 113 Cal.App.4th 1260, where the court rejected this argument and held that the 25-year-to-life section 12022.53 subdivision (d) enhancement is properly imposed on a life without parole sentence. The court pointed out that this argument "equates offenses and enhancements for punishment purposes" and determined that the term "another provision of law" in subdivision (j) of section 12022.53 refers to other provisions governing enhancements for use of a firearm. (*Id*. at pp. 1264-1265.) Thus, although the issue is effectively moot in view of Soto's sentence of life without parole, the enhancement was properly imposed in his case.[14]

---

[13] Ramirez, who made the statement at issue, has not expressly joined in this contention and has not discussed its applicability as to him. We do not consider this issue as to Ramirez.

[14] In *People v. Shabazz*, formerly (2004) 118 Cal.App.4th 1458, on which appellant relies, the Supreme Court granted the People's petition for review (S126065, review granted Sept. 15, 2004) and transferred the matter with directions to reconsider this issue in light of *People v. Chiu*, *supra*, 113 Cal.App.4th 1260.

VI. Soto's juvenile adjudication was properly used as a strike.

The information alleged as to Soto that he had a prior juvenile adjudication for robbery within the meaning of the three strikes law. He waived his right to jury trial on the allegation, and it was found true by the trial court. As a result, the sentences in counts 2 through 5, which were ultimately stayed, were doubled pursuant to the second-strike provisions of the three strikes law.

Soto contends that the use of his juvenile adjudication as a strike violated his federal constitutional right to due process as set forth in *Apprendi v. New Jersey* (2000) 530 U.S. 466 (*Apprendi*). In *Apprendi*, the United States Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Id*. at p. 490.) Relying on *U.S. v. Tighe* (9th Cir. 2001) 266 F.3d 1187, Soto argues that prior juvenile adjudications are not prior convictions within the meaning of the exclusion set forth in *Apprendi*, because juvenile adjudications rested on a finding by a court and not a jury and therefore did not afford one of the three requisite procedural protections (fair notice, reasonable doubt and jury trial) underlying *Apprendi*'s exception for prior convictions. We disagree.

As Soto acknowledges, his arguments have been repeatedly rejected by California appellate courts, including courts in this district. (*People v. Superior Court* (*Andrades*) (2003) 113 Cal.App.4th 817, 830-834; *People v. Lee* (2003) 111 Cal.App.4th 1310, 1312-1316; *People v. Smith* (2003) 110 Cal.App.4th 1072, 1075-1079 [Second District, Division Seven]; *People v. Bowden* (2002) 102 Cal.App.4th 387, 391-394 [Second District, Division Four].) We agree with the conclusions reached by these courts, which need not be repeated here. In his reply brief, Soto cites *Blakely v. Washington* (2004) 542 U.S. __ [124 S.Ct. 2531], a case in which the United States Supreme Court applied *Apprendi* to the Washington sentencing scheme. *Blakely* adds nothing to Soto's argument. Although the determination that Soto is a second-striker is meaningless in view of his life without parole sentence and the fact that the remaining sentences were stayed, he was properly found to have a strike based on his juvenile adjudication.

DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, P. J.

BOREN

We concur:

_____, J.

NOTT

_____, J.

ASHMANN-GERST